

Exhibit A

BARRY J. PORTMAN
Federal Public Defender
ELIZABETH FALK
Assistant Federal Public Defender
450 Golden Gate Avenue
19th Floor
San Francisco, CA. 94102
Counsel for Defendant Noe Arias Ordenez

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Noe ARIAS CRDONEZ,
Defendant.

**DECLARATION OF ANGELA BEAN IN
SUPPORT OF Noe Arias Ordonez**

I, Angela Bean, declare:

1. I am an attorney admitted to practice in all courts of the State of California and in this Court. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could testify to those facts under oath. I am submitting this declaration as an expert witness and certified specialist in Immigration and Nationality Law.

2. This declaration supplements my initial statement, and addresses the Government's contention that because Mr. Arias Ordonez pursued his right to seek a hearing in front of an immigration judge, rather than acquiesce to his immediate departure from the United States without further proceedings, he could not reasonably have sought pre-hearing voluntary

BEAN DECL.

1

1 departure at his removal hearing.

2 3. As a point of clarification, despite its name, "pre-hearing voluntary departure", is
3 available at any point prior to the completion of removal proceedings. INA § 240B(a)(1).
4 Accordingly, "pre-hearing voluntary departure" would have been a possible remedy for Mr. Arias
5 Ordonez at his June 6, 2003 hearing.

6 4. Regarding the government's argument, there are several reasons for Mr. Arias
7 Ordonez to exercise his right to a hearing in front of an immigration judge, and even if he would
8 have ultimately sought pre-hearing voluntary departure. Accepting departure without appearing
9 before an immigration judge is a distinct, and lesser, benefit than pre-hearing voluntary departure
10 granted at a removal hearing.

11 5. First, the consequences of accepting a prompt departure are ambiguous and not
12 explained on the form presented to Mr. Arias Ordonez. Notably, the option is not specifically
13 designated "voluntary departure". Furthermore, in my experience, the processing of the prompt
14 departure option is inconsistent, and it is not clear that Mr. Arias Ordonez would have ultimately
15 been able to avoid removal by ICE officers had he elected this option.

16 6. Further, if he did not request a hearing, Mr. Arias Ordonez explicitly would have
17 accepted departure "as soon as arrangements can be made", and to remain in custody until
18 departure. In contrast, the immigration judge can grant a pre-hearing voluntary departure period
19 of up to 120 days, and Mr. Arias Ordonez was eligible to be free on bond during this time. He
20 would have also been able to make his arrangements for departure, whereas those who elect to
21 depart instead of a hearing may be removed in ICE custody.

22 7. Finally, even though Mr. Arias Ordonez likely would have been eligible only for
23 pre-hearing voluntary departure in front of an immigration judge, he was not in a position to make
24 such a determination when provided with a Request for Disposition. Notably, he was in DHS
25 custody when given the form, making access to counsel much more burdensome. Non-citizens are

1 given the form shortly after they are taken into DHS custody, and usually before they are able to
 2 seek counsel. In fact, non-citizens are advised of their right to counsel on the same form as the
 3 Request for Disposition, sometimes in the first instance.

4 8. In addition to usually lacking counsel, non-citizens are encouraged to make a
 5 decision regarding how they choose to proceed relatively quickly. If they do accept a prompt
 6 departure, such an election is very difficult to rescind, while they are at greater liberty to return to
 7 their home countries if they initially elect to see an immigration judge.

8 9. Since Mr. Arias Ordonez would not have been released from custody without
 9 requesting a hearing, such step permitted him to fully investigate any potential relief from removal.
 10 Even if he did not seek counsel, the immigration judge would have been obligated to inform Mr.
 11 Arias Ordonez of any potential remedies she was able to identify. 8 C.F.R. §1240.11(a)(2). It is
 12 eminently reasonable that someone presented with a Request for Disposition would seek expert
 13 immigration advice before departing the United States, rather than simply leaving on the
 14 assumption that no relief was available.

15 10. Notably, Mr. Arias Ordonez's immigration file indicates that on the same day he
 16 was presented with his Request for Disposition, the government also determined he would be
 17 released from custody upon posting a \$5,000 bond. The file also indicates he was ultimately
 18 released on bond two days later. Being free from custody prior to leaving the country, with the
 19 opportunity to say good-bye to friends and family, as well as resolving one's affairs, is frequently
 20 sufficient incentive alone to request a hearing.

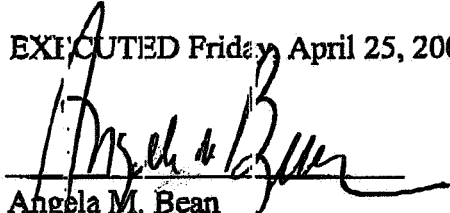
21 11. Therefore, it is usually highly preferable for non-citizens to exercise their right to a
 22 hearing in front of an immigration judge, even if they ultimately accept pre-hearing voluntary
 23 departure. The government's inference that Mr. Arias Ordonez would not have accepted pre-hearing
 24 voluntary departure simply because he chose to proceed with a hearing with an immigration judge
 25 is wholly incorrect.

1 12. Had Mr. Arias Ordonez sought pre-hearing voluntary departure in front of the
 2 immigration judge, it is highly probable his request would have been granted. While voluntary
 3 departure is subject to the immigration judge's discretion, the burden in such requests is much lower
 4 than for benefits conferring a right to remain in the United States. Generally, the DHS attorneys
 5 do not oppose requests for pre-hearing voluntary departure, as they ensure a timely departure and
 6 save the government the expense of deporting the alien.

7 13. Furthermore, by accepting pre-hearing voluntary departure, Mr. Arias Ordonez
 8 would relinquish his right to appeal the immigration judge's decision, thereby requiring him to
 9 leave the country within 120 days. A denial of voluntary departure, however, could be appealed to
 10 the Board of Immigration Appeals. Mr. Arias Ordonez would be able to remain in the United
 11 States while the appeal was pending, usually for several months even well beyond one year.
 12 Accordingly, even an immigration judge holding a dim view of Mr. Arias Ordonez would likely
 13 grant his pre-hearing voluntary departure request, rather than provide him with an opportunity to
 14 extend his stay.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is
 16 true and correct.

17 EXECUTED Friday, April 25, 2008, Oakland, California.

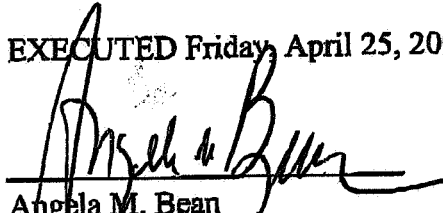
18
 19 
 20 Angela M. Bean
 Attorney at Law
 Oakland, California
 21
 22
 23
 24
 25

1 12. Had Mr. Arias Ordonez sought pre-hearing voluntary departure in front of the
2 immigration judge, it is highly probable his request would have been granted. While voluntary
3 departure is subject the immigration judge's discretion, the burden in such requests is much lower
4 than for benefits conferring a right to remain in the United States. Generally, the DHS attorneys
5 do not oppose requests for pre-hearing voluntary departure, as they ensure a timely departure and
6 save the government the expense of deporting the alien.

7 13. Furthermore, by accepting pre-hearing voluntary departure, Mr. Arias Ordonez
8 would relinquish his right to appeal the immigration judge's decision, thereby requiring him to
9 leave the country within 120 days. A denial of voluntary departure, however, could be appealed to
10 the Board of Immigration Appeals. Mr. Arias Ordonez would be able to remain in the United
11 States while the appeal was pending, usually for several months even well beyond one year.
12 Accordingly, even an immigration judge holding a dim view of Mr. Arias Ordonez would likely
13 grant his pre-hearing voluntary departure request, rather than provide him with an opportunity to
14 extend his stay.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct.

17 EXECUTED Friday, April 25, 2008, Oakland, California.

18
19 
20 Angela M. Bean
21 Attorney at Law
22 Oakland, California
23
24
25